

MCC:MEM:all/2001V00598

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SC
**FILED
HARRISBURG**

Sept 26 2001

MARY E. DABAREA, CLERK
Per ME
CLERKUNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

JEROME SMITH,	:	Civil No. 1:CV-01-1026
Plaintiff	:	(Judge Rambo)
v.	:	
UNITED STATES OF AMERICA,	:	(Magistrate Judge Smyser)
Defendant	:	

DEFENDANT'S REPLY TO PLAINTIFF'S MOTION
FOR DEFAULT JUDGMENT AGAINST DEFENDANT

Plaintiff is Jerome Smith, an inmate currently incarcerated at the Allenwood Federal Prison Camp in Montgomery, Pennsylvania. On June 8, 2001, Smith filed a complaint, naming as defendants the United States of America and Federal Bureau of Prisons. Smith's complaint contains a medical negligence claim under the Federal Tort Claims Act ("FTCA") and Bivens¹ claims.

By order of July 10, 2001, Smith's Bivens claims were dismissed, Smith's FTCA claim against the Federal Bureau of Prisons was dismissed, and the Clerk of Court was directed to remove the Federal Bureau of Prisons as a defendant. The only remaining claim is the FTCA claim against the United States.

On August 28, 2001, a motion to dismiss or, in the alternative, for summary judgment was filed on behalf of the United

¹ Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971).

States. On September 12, 2001, defendant filed a brief in support of its motion to dismiss or for summary judgment in accordance with M.D. Pa. Local Rule 7.5. Defendant also filed a Statement of Material Facts on September 12, 2001, in accordance with M.D. Pa. Local Rule 56.1.

On September 11, 2001, Smith filed a motion for default judgment against defendant, claiming that because he had not yet received defendant's supporting brief, defendant had failed to comply with M.D. Pa. Local Rule 7.5.

The Federal Rules of Civil Procedure state:

(a) **Computation.** In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday.... *When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.* As used in this rule and in Rule 77(c), "legal holiday" includes New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, **Labor Day**, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the state in which the district court is held.

Fed. R. Civ. P. 6(a) (emphasis added).

Defendant's motion to dismiss or for summary judgment was filed on Tuesday, August 28, 2001. Therefore, pursuant to M.D. Pa. Local Rule 7.5, defendant's brief in support was due within 10 days. When calculated according to Fed. R. Civ. P. 6(a) the due date was September 12, 2001.

With regard to service of defendant's brief in support, the Federal Rules of Civil Procedure state that "service by mail is complete upon mailing." Fed. R. Civ. P. 5(b).

Defendant's brief in support of its motion to dismiss or for summary judgment was timely filed and served in accordance with all applicable rules of civil procedure. Therefore, Smith's motion for default judgment should be denied.

Respectfully submitted,

MARTIN C. CARLSON
United States Attorney



The signature is handwritten in black ink. It appears to read "Mark E. Morrison" followed by a smaller, less distinct name or title like "PA".

MARK E. MORRISON
United States Attorney

ANITA L. LIGHTNER
Paralegal Specialist
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P.O. Box 11754
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(717) 221-4482

Dated: September 24, 2001

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

JEROME SMITH, :
Plaintiff : Civil No. 1:CV-01-1026
v. : (Judge Rambo)
UNITED STATES OF AMERICA, :
Defendant : (Magistrate Judge Smyser)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion to be competent to serve papers.

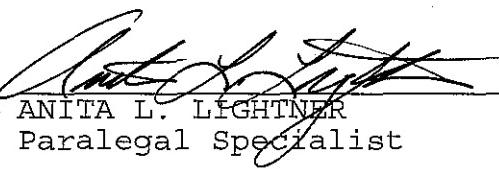
That this 26th day of September, 2001, she served a copy of the attached

DEFENDANT'S REPLY TO PLAINTIFF'S MOTION
FOR DEFAULT JUDGMENT AGAINST DEFENDANT

by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Harrisburg, Pennsylvania.

ADDRESSEE:

Jerome Smith
Reg. No. 19145-018
FPC Allenwood
P.O. Box 1000
Montgomery, PA 17752


ANITA L. LIGHTNER
Paralegal Specialist